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6 ***UNITED STATES DISTRICT COURT***
 7 ***DISTRICT OF NEVADA***

8 ***-oOo-***

9 UNITED STATES OF AMERICA,)
)
 10 Plaintiff)
) 2:09-cr-00199-PMP-PAL
 11 vs.)
)
 12 DONALD MC GHAN,)
)
 13 Defendant.)
 14

15 **RECOMMENDATION OF THE UNITED STATES REGARDING RESTITUTION**

16 The United States recommends the following regarding restitution.

17 Defendant defrauded his victims of \$97,449,631.39. The victims sued the defendant
 18 and others to recover damages. They include entities and individuals. Some are insurance companies;
 19 others are referred to as “primary wrongdoers,” those whom the victims alleged had some role in
 20 enabling the harm. They include individuals, financial institutions, and other entities. Several
 21 entities and individuals have settled for more than \$90 million. More settlements are expected.

22 From the settlements, victims have and will be paid. They will not recover the full
 23 amount of their losses from the settlements. First, the recovery will be less than \$97 million. Second,
 24 from the recovery will be taken attorneys fees, receivers fees and other costs. The government
 25 understands that the victims may recover about sixty cents on the dollar.

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1 Inasmuch as settlements are ongoing, the exact amount of the victims' recoveries is
2 unknown. However, the amounts obtained from insurance companies is known. Accordingly, the
3 government recommends the following.

4 First, the court should order restitution in the full amount of \$97,449,631.39. Next the
5 court should order that the victims be paid first from the restitution in amounts that will make them
6 whole, that is, the difference between the amount they entrusted to Southwest Exchange and the
7 amount they recovered from the civil settlements. Second, the court should order that once the
8 victims are paid, then the insurance companies are paid next. Third, the court should not order that
9 the "primary wrongdoers" are paid from the restitution. The government does not have enough
10 information to make a recommendation regarding repaying the "primary wrongdoers." The "primary
11 wrongdoers" can seek compensation in civil actions from the defendant, if they so desire. Fourth, the
12 court should place the burden on the defendant to notify the court of the total amounts paid from the
13 settlements to the victims. Once that amount is known, the defendant can then ask the court to reduce
14 the restitution amount and accrued interest to reflect the exact amount owed.

15 As to amounts owed to the victims, the court could include in the order the following:

16 The 122 victims identified in Attachment 1 (to be supplied at
17 Sentencing) shall be paid the full amounts stated therein less
18 any amounts disbursed to such victims from settlement funds
19 obtained in Action 07-A-535439-B in the Eighth Judicial
20 District Court of the State of Nevada in and for the County of
21 Clark entitled "*In Re: Receivership of Southwest Exchange,*
22 *Inc. and Consolidated Litigation*," together with all actions and
23 proceedings joined, consolidated, or coordinated with that
24 action and/or MDL Docket No. 1878, Case No. 2:07-cv-01394-
25 RCJ-(LRL), pending in the United States District Court for the
26 District of Nevada entitled "*In Re: Internal Revenue Service §*

1 *1031 Tax Deferred Exchange Litigation*," together with all
2 actions and proceedings joined, consolidated, or coordinated
3 therein. Restitution amounts shall be apportioned between and
4 among the Southwest Exchange customers (victims) as set
5 forth on Attachment 1 hereto. Defendant shall be responsible
6 for providing evidence of proof of distributions to the
7 Southwest Exchange customers to reduce the amount of
8 restitution set forth herein.

9 As to the amounts owed to the insurance companies, the court could include the following in
10 the order:

11 The following entities shall be paid the following amounts after the victims are paid,
12 with the total amount paid to these entities equal to \$34,763,500:

13 US Fire Insurance Company – \$5,000,000
14 CAN (Continental Insurance Company) – \$3,750,000
15 Lockton Insurance Brokers, Inc. – \$3,325,000
16 Great American Insurance Company – \$5,000,000
17 Underwriters of Lloyds – \$3,900,000
18 Greenwich Insurance Company – \$3,150,000
19 Federal Insurance Company – \$5,000,000
20 Carolina Casualty – \$3,444,000
21 RSUI Indemnity – \$2,194,500

22 Restitution will not be ordered to the following, who have settled in the amounts specified
23 below.

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UBS	\$23,000,000
David Keyes	\$ 200,000
Betty Kincaid	\$ 1,200,000
Citigroup	\$26,727,310.90
Brown & Brown	\$ 8,000,000

DATED this 11th day of September, 2009.

Respectfully submitted,

GREGORY A. BROWER
United States Attorney

/s/ Daniel R. Schiess

DANIEL R. SCHIESS
Assistant United States Attorney

ELECTRONIC CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee of the United States Attorney's Office, District of Nevada, and that on this day an electronic copy of the foregoing RECOMMENDATION OF THE UNITED STATES REGARDING RESTITUTION was electronically served on counsel of record:

Dated this 11th day of September, 2009.

/s/ Pamela J. Mrenak

PAMELA J. MRENAK
Legal Assistant